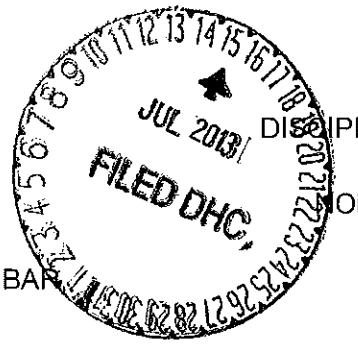
STATE OF NORTH CAROLINA

WAKE COUNTY

THE NORTH CAROLINA STATE BAR
Plaintiff,

v.

DAVID C. SUTTON, Attorney,
Defendant.



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
13DHC11

ANSWER/REPLY

Introduction

There are six claims/counts though in the Bar's Amended Complaint. A general description of each claim is provided before the specific answers for each claim.

Overview to Claims 1 and 2

The Defendant represented the Plaintiff, Barbara Pollard, in a wrongful death case, *Pollard v. Pollard,* Pitt County file number 08-CvS-52 that resulted in a jury verdict and judgment of $500,000 against the Defendant, Michelle Pollard. Ms. Barbara Pollard is the mother of the decedent, Stacey Pollard, who was found dead in a swimming pool on November 18, 2005. The case originated in Federal Court.

The case was controversial from the start. The wife of the Decedent was a Pitt County Sheriff's Deputy. Her 911 account was that she found her husband, a lifelong epileptic, in a pool of freezing water late at night. The Pollard family had information that the wife had had an affair with the Deputy in charge of homicide investigations, but the Sheriff's Office refused to refer the investigation to an independent agency. In fact, the Sheriff closed the case and deemed the death accidental. After applying public pressure, the Sheriff referred the case to the SBI four months after the death.

After flunking the SBI polygraph, the wife stated that she had pushed her husband in the pool as a joke, went in the house and later found him floating in the pool. The former sheriff then gave a statement FOR HER stating that his deputy had just DREAMED pushing her husband in the pool. Though all of this was documented by the SBI, the District Attorney withheld this information from the family for over a year, leaving them only a few months to file a wrongful

death claim which must be filed within two years of death.

The District Attorney declined prosecution stating that his good friend and Assistant Attorney General opined that there was insufficient evidence to submit the case to the Grand Jury for criminal prosecution. No prosecution has ever taken place.

The Pitt County Sheriff and (former) Deputy Michelle Pollard (and wife of decedent) were originally sued in Federal Court in July of 2007 for section 1983 civil rights violations, along with the wrongful death action. In January of 2008, the federal claims were dismissed and the state wrongful death claim was filed in Pitt County Superior Court.

The Defendant, Michelle Pollard, while represented by Ward and Smith, moved to dismiss the wrongful death suit. Her motion was denied by visiting Superior Court Judge Hockenbury of New Hanover County. He ruled from the bench, but the attorneys did not agree on the wording of the Order. Ward and Smith withdrew about that time and somehow Judge Hockenbury's Order never got entered, but he signed Ward and Smith's proposed order.

The Defendant then hired Lee Allen and some discovery ensued. Shortly thereafter, the Defendant filed for Chapter 13 bankruptcy protection and a stay was entered. Allen withdrew.

Bankruptcy Judge Randy Doub lifted the stay to allow the wrongful death case to proceed to trial. In late 2009, the Defendant hired Kathryn Fagan.

In Spring and Summer of 2010, Ms. Fagan conducted some discovery and filed several pre-trial motions, including a motion to dismiss, motion to change venue and motion to disqualify David C. Sutton. Fagan complained about the justice4stacey website[1] and the fact that the undersigned was "first cousin to the son-in-law of the Plaintiff" and "that [David Sutton] knew things about the case."

Michelle Pollard filed a bar grievance(s) against the undersigned in March of 2008. One of her allegations concerned the justice4stacey.com website. The State Bar dismissed her grievances(s) a few days after she went to prison for felony obstruction of justice in January of 2010. {She tipped off a drug dealer her own department was investigating.}

The undersigned informed the Bar that a family friend of the Pollards who had some computer programming experience created the website. The undersigned also informed the bar that he gave his credit card number to the website creator to pay the website hosting fees, but that Mrs. Pollard reimbursed that expense. The purpose of the website was to obtain witnesses. Initially, newspaper articles and pleadings were posted on the website. The undersigned participated in posting some of the newspaper articles and pleadings. Various individuals and Pollard family members made postings to the website, many at the urging of (then candidate) Sheriff Neil Elks.

The State Bar advised the undersigned that it was a "bad practice" to allow his credit card to be used for a website for which he did not have exclusive control, but took no other action.

The undersigned said virtually the same thing in response to Fagan's motion and is perplexed that the State Bar is pursuing discipline for something that it cleared the

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[1] Michelle Pollard filed several bar grievances against David Sutton in March 2008, including an objection over the website and a bizarre allegation that David Sutton had impersonated Gregg James (his former law partner) at the Pitt County jail in 2002 or 2003. Her bar grievances were dismissed back in January of 2010 when Michelle Pollard was convicted of felony obstruction of justice and given a prison sentence.

defendant of over three years ago.

Every Plaintiff's motion filed by Fagan was denied. In open court (before Superior Court Judge Crow) Ms. Fagan accused the undersigned of forging Judge Hockenbury signature on the Order denying the Defendant's motion to dismiss -- that was heard two years earlier when Ward and Smith was representing Michelle Pollard. [The State Bar actually asked the undersigned to ask Judge Hockenbury to confirm that it was indeed his signature.]

Judge Crow stated on the record (at the beginning of the Pollard trial) that he recognized Judge Hockenbury's signature and disregarded the baseless claim by Fagan..

Barbara Pollard's deposition was taken on Friday May 13, 2011 by Kathryn Fagan. {The undersigned had just been informed by Dr. Brechtelsbauer (an ear, nose and throat specialist that had just taken a biopsy) that his wife had cancer in her nasal cavity a day or two earlier. We were fortunate that it turned out to be non-Hodgkins lymphoma which has a good cure rate, but we did not know the type of cancer or the prognosis at that time.}

Ms. Barbara Pollard was not present at the death of her son and knew very little about the case except that her son died and Michelle Pollard told at least three different stories about how it happened. Ms. Barbara Pollard had not worked outside the house for decades. Her husband died of cancer about one year before her son died. [The undersigned took the case because his first cousin, Robert Sutton, was married to the decedent's sister, Lynn Pollard Sutton.]

Barbara Pollard cleans houses, but was overwhelmed by the deaths of both her husband and son. She was frightened and the majority of my deposition preparation was to get her to say, "I don't know" because she thought it made her seem ignorant to answer that she did not know the answer to a question. As can be seen from reading the entire deposition, she knew very little about the case. See page 9 wherein the undersigned explained objections in depositions to Ms. Barbara Pollard. On page 10, Ms. Barbara Pollard began crying when asked about going to the hospital [to see her dead son] and on page 11 we took a break for her to regain her composure. That happened more than once. She had great difficulty answering questions. See page 15 where Mr. Sutton says "Just do the best you can, Ms. Pollard. There are no perfect words." What the Bar complains was telling Mrs. Pollard how to answer questions was in reality helping a grief-stricken, unsophisticated mother answer several hours of questions that were mostly irrelevant, harassing in nature, poorly worded and completely unnecessary.

The majority of Fagan's questions during the deposition were simply asking Ms. Pollard questions about the investigation that had been conducted by the SBI and the medical examiner. Ms. Pollard was never interviewed by the SBI or the medical examiner and I don't believe she ever read the three volume SBI investigation file. Upon reading the deposition to prepare for this answer, it would have been proper to terminate the deposition of Ms. Pollard as it was harassing in nature and the vast majority was not calculated to lead to the discovery of admissible evidence which is the standard for terminating discovery. In fact, during one break that was taken after Ms. Pollard began crying, Fagan stated to the undersigned that if "she can't take it now, wait until trial." Given everything that Ms. Pollard had gone through and the opposing party was a convicted felon for obstruction of justice by this time, it was "upsetting." However, terminating the deposition would likely lead to another defense continuance (the case was three years old and Stacey had died almost FIVE years earlier at that time) and the decision was made to make every effort to bring the matter to trial.

1. Admitted in part and denied in part because Defendant's position is that this disciplinary action was, at least in part, motivated by the North Carolina Attorney General's Office and influenced by Jim Coman of that office.

2. Admitted.

3. Admitted.

4. Answers to 1, 2, and 3 are restated

5. Admitted.

6. Admitted that Fagan was the last of four attorneys who represented Michelle Pollard in the action.

7. Admitted.

8. Denied as stated. Admitted that David Sutton made several objections, the vast majority of which are commonplace. Ms. Pollard had absolutely no direct knowledge of how her son died and knew very little that was not hearsay and/or contained in the SBI file that Fagan had in her possession. Ms. Pollard is an elderly widow who is not sophisticated and cried several times during the deposition. Fagan's questions were harassing and annoying in nature and concerned matters which Ms. Fagan knew that Ms. Pollard knew nothing about. **At one point, Fagan wanted to know why it bothered Ms. Pollard that her daughter in law directed her son to fetch her cigarettes when Ms. Pollard let her son and Michelle move in with them temporarily after Hurricane Floyd -- in 1999. (See pages 108-109)** During a break in the deposition, Fagan said to Sutton that "if [Ms. Pollard] couldn't take the heat now, wait until the trial". Ms. Pollard was cautioned by the undersigned not in speculate to her answers. See generally the entire deposition. Since Ms. Pollard knew nothing about the main issues in the case, and Fagan didn't inquire about the few issues that Ms. Pollard did know something about, it is somewhat misleading to accuse the undersigned of telling Ms. Pollard how to answer questions. What counsel did, and the deposition is replete with these admonitions by the undersigned, was to advise Ms. Pollard not to speculate, answer if you know, you don't have to give exact dates, do the best you can. This is common practice in depositions by most experienced litigators. All Ms. Pollard knew was that her son was dead and that Michelle Pollard had lied about it and slept with the chief of homicide investigations while she was married to her son -- because she was present, with five other people, when Lee Moore admitted to it. Only then did the Pitt County Sheriff call in the SBI.

9. Deny. The quotation is from Ms. Pollard, not David Sutton. Below is the portion of the deposition (pages 96-97) which shows the context and David Sutton's comments are not improper and certainly not unethical.

Q. But they had a -- do you -- **was the house paid off**?
A. I don't know.
MR. SUTTON: She just said she didn't know.
A. I don't know.
Q. Okay. So you don't know if that's true or not? You just know that --
MR. SUTTON: For the third time, she doesn't know.
Q. -- they had a house -- you just know that they had a house together?
MR. SUTTON: For the fourth time, she doesn't know --
A. I don't know.
MR. SUTTON: -- whether it was paid off.
A. I don't know.
Q. I didn't ask her that. You know they had a house together?
A. Yes. Well, as far as I know, both of them's name was on it.

In fact, Fagan did ask Ms. Pollard if the house was paid off and she didn't know. Sutton correctly restated Fagan's question. She then changed the question to something Ms. Pollard did know and she answered that question with no objection. The parties were speaking at the same time and this happened in a matter of seconds. It appears much different in the written form than the faster paced oral questioning and objecting.

10. Admit to making that statement, but deny that it is unethical to do so, and the remarks are taken out of context. This soliloquy followed immediately after the questions set out above. Fagan's client was the executor and only heir to Stacey Pollard's estate and life insurance. Only she had the titles to the cars and boats and only she knew how the vehicles were titled and whether they were paid off or not. Ms. Pollard did not know and later said on page 98 "They had cars. I don't know whose name was on what." Frankly, it was inexplicable that Fagan asked these questions especially in light of the fact that Fagan's client was in bankruptcy and had disposed of most, if not all, of the assets that she was asking Ms. Pollard about.

11. Admit only that those statements were made but deny they are unethical and again submit that they are taken out of context. The context is as follows. First, on the preceding page (68), Fagan asked Ms. Pollard if she spoke to a witness [Theresa Thompson] at her son's funeral. Ms. Pollard replied that it was like a "nightmare". Then, Fagan asked when Thompson "called" Ms. Pollard. **It was believed that Thompson made the anonymous calls to Ms. Pollard a few days after the funeral to the effect that Stacey did not die the way you are being told and that Stacey was "leaving Michelle" when he was found dead in the pool -- and Fagan was aware of that.** Fagan's question assumed facts not in evidence and called for speculation on the part of the witness. Perhaps the objections could have been worded differently but the statements complained of were objections to misleading questions that assumed facts not in evidence and called for speculation on the part of the witness.

12. Admit only that the quotes appear in the deposition on pages 80 and 81, but are taken out of context and are not unethical. The Bar says that Fagan questioned the witness about a "the

timing of a conversation between two **individuals"** but leaves out that one of the individuals was David Sutton, the lawyer for Ms. Pollard. The other was Theresa Thompson. Fagan's question violated attorney-client privilege because it asked Ms. Pollard to answer what her attorney talked to her about. However, David Sutton knew that Ms. Pollard did not know when HE had the conversation with Thompson and just answered. Fagan then complained that she wanted to know what Ms. Pollard knew -- EVEN IF IT MEANT THAT MS. POLLARD WAS TO RECOUNT WHAT HER LAWYER HAD TOLD HER. Again, perhaps the objection could have been worded different, but it was not improper or unethical.

13. Deny that any unethical conduct occurred. Yes, the comments are not typically made during a deposition. This was not a typical case and Fagan was continually asking questions that either went to attorney-client privilege, hearsay, speculation and/or were contained in the SBI file which presumably Fagan had read. The question was about a conversation that I had had with a witness, not Ms. Pollard and/or a statement Thompson gave to the SBI.

14. Deny that any unethical conduct occurred. This again shows that Fagan was asking about a conversation that the attorney for Ms. Pollard had with a witness, is a compound question and assumes facts not in evidence -- which were not true. David Sutton made a proper objection.

15 Deny that it is improper or unethical to state to a client during a deposition, "if you know" or "if you remember". It is another of stating an objection and it is done by attorneys routinely in depositions.

16. Admit only that Ms. Pollard made that statement that the Bar is obviously taking out of context. On the very next page (106), Ms. Pollard explains that David Sutton was not telling her what to say, but rather, "He's explaining to me what you want or something." Four lines below that David Sutton says, "I don't speak for her." Ms. Pollard was thanking me for helping her get through something that was very difficult for her and she made a statement that is clearly being misinterpreted and is cleared up a few lines later in the deposition.

17. Admit that the statement was made but not that it is unethical. The deposition was over the death of the deponent's only son and Fagan was asking her why it bothered her that Michelle would sit around and order her son to go get her cigarettes -- ELEVEN YEARS EARLIER IN 1999 DURING HURRICANE FLOYD. The statements reflect a degree of frustration that Fagan was asking about cigarettes to a woman who had lost her son under horrendous facts.

18. Deny that the comment violates the rules of ethics, but the comment could have been phrased more properly as an objection. The context of the remark was that Fagan was trying to get Ms. Pollard to admit that she knew that an anonymous phone call she had received a few days after her son had died was from Theresa Thompson. See the answers above in 11, 12 and 13. However, it would have been better if David Sutton had just objected to the question as being misleading. In a case where someone murdered someone's son and used her position at the Sheriff's Office to cover it up while having affairs with the head of homicide investigations, it

will get emotional. Emotional statements made during the heat of a hotly contested case do not constitute unethical conduct.

19. Deny that the entire comment is stated accurately and deny that it is unethical to make a joke about a fact in a case to the opposing lawyer after the deposition concluded. The remark was about getting a boyfriend or a girlfriend and to perhaps contact her client as she likes girls and boys. A few hours after Stacey Pollard's funeral, Michelle Pollard, the grieving widow, was in found (by her own mother) in bed with Crystal Brock and Glenn Brock, a registered sex offender that Michelle selected as a pallbearer. Crystal was performing oral sex on Michelle when Michelle's mother walked in and Michelle was rubbing Glenn's bare chest. All three were in bed together. This is contained in the SBI file and Fagan had it. During the trial, Glenn Brock testified to that effect. Crystal had died in a single car accident by that time and did not testify. No doubt the remark was offensive which was sort of the point. The comment was designed to demonstrate that jurors would not like her client and would probably infer the worst about Fagan's client based upon that conduct. Michelle Pollard admitted this but claimed she was too medicated to know what was going on. The comment was a reference to the case.

20. The answers in paragraphs one through nineteen are restated.

21. Admit that Fagan filed a motion to change venue that was denied.

22. Admit that those words and others were made by David Sutton. Deny any unethical conduct and deny any untrue statement was made. This quoted language is virtually identical to the same language that David Sutton told the Bar in response to Michelle Pollard's 2008 bar grievance against David Sutton which was dismissed. The only difference is that Fagan used the word "sponsor". David Sutton does not know precisely what is meant by sponsoring a website, but assumed it meant to create the website and/or provide the computer hosting service. The undersigned stated that he fronted the cost of hosting the website and it is my understanding that the creator of the website did not charge for those services. In any event, David Sutton did not pay him. The undersigned is in the process of getting his name, but has never met the gentleman nor spoken to him in four or five years.

23. Neither Admitted nor Denied. Defendant herein doesn't know what an initial registrant is nor whether he was the administrator or not. As the Bar pointed out, several individuals had the administrative passcode, and the website creator would have determined who the registrant and administrator was. It is believed that the Bar spoke to or ascertained the identity of the web designer back in 2009. David Sutton did not create the website. The website was started in an attempt to find witnesses who had information about the death of Stacey Pollard - which is a common practice.

24. Neither Admitted nor Denied. David Sutton has maintained at all times that his credit card was used to pay the company that hosted the website. When the State Bar dismissed the grievance related to this website in 2010, it stated to David Sutton that it was not a good practive

to allow your credit card to be used to pay for the hosting services for a website. Having said that it is denied that any unethical conduct was committed in permitting the use of a credit card to pay for a litigation expense. It is done routinely in the hope that the client will reimburse the expense or it is reimbursed from a trust account.

25. The answers in paragraphs one through 24 are restated herein.

26. Denied. Upon information and belief, the email being referenced was sent by a former paralegal who currently works for Lenoir County Department of Social Services as an investigator. The law office had just obtained a "gmail" account and Mrs. Adams, took some initiative and sent an email (to the entire address book) notifying everyone of the new email address. The undersigned was unaware that she sent the email without blind copying the address book.

27. Denied. The email did not identify one single client. For example, Bar counsel Mary Winstead and the Honorable Fred Morelock are in the address book. They are not clients. But if they were clients, the email containing their email address would not reveal that fact. At that time, the firm email address book had very few clients in it. Most of the addressees were members of the legal profession, their staff, vendors, friends and relatives. There were no clients whose identity was confidential and the identity of the few clients who were in the address book were a matter of public record (i.e. contained on or in a court file that identified them as my client). Information in a public record is not confidential. Many domestic clients give their email addresses to their ex-spouses. Clearly that is not confidential. The only way that email could ever lead to anyone discovering that any addressee on that email was a client would be for someone to email them all and ask, "are you a client of David C. Sutton?" Then that person would have to reply that he or she was a client. Hence, only a client (not the email from the Sutton Law Office) could reveal that information even if their identity were confidential. Also, the ethical violation cited is for misconduct by the lawyer and not for failure to properly supervise a paralegal -- which would also not be supported by the facts alleged by the State Bar.

Claims 4 and 5

David Sutton represented Rita Langston in a domestic action against her husband, Wayne Langston, in Beaufort County file number 11-CvD-50. He also represented her in a domestic violence case against Wayne and her divorce as well. They separated the year before.

Originally, Mr. Langston hired Brantley Peck, but he withdrew. Mr. Langston was *pro se* for a while. On September 9, 2011 while Wayne Langston was *pro se*, both parties were ordered to put all rents collected from the marital rental properties in a specific account. Then Mr. Langston hired Ann Barnhill. Then he hired Jeff Miller, who remained his attorney until the case was completely resolved.

Several depositions were taken on May 10th and 11th while Brantley Peck was Mr. Langston's lawyer.

The parties owned several trailer parks, apartments and rental properties. Each party claimed the other was collecting the rents and misapplying the proceeds - except Mr. Langston was held in contempt for doing so. The mortgages became delinquent, the properties fell into disrepair and the value of the marital estate began to dissipate.

Wayne Langston had a very large judgment (recollection is about $400K) against him in his name only as a result of a federal lawsuit over gasoline leakage at a convenient store that he managed on his own without even informing his wife that he was doing so. Moreover, he never informed her of the judgment. The undersigned discovered it and revealed it's existence to Ms. Langston. As a result, Mr. Langston could not own property in his own name or the judgment would attach as a lien. Therefore, all the properties were titled to "R&L Investment Homes, LLC" which was officially (according to all marital tax returns) owned solely by Rita Langston. As a trial strategy, the undersigned endeavored to get "R&L Investment Homes, LLC" dissolved before mediation as the parties were divorced by that time and any properties Mr. Langston obtained would be encumbered by the judgment lien. This angered Mr. Miller so much that he wrote in an email that David Sutton obtained an unfair settlement in his client's favor -- AFTER the case was over. Mr. Miller demanded, and this is contained in the type written portion of the mediated agreement, that Ms. Langston reinstate "R&L Investment Homes, LLC" and that all property Mr. Langston received was to be transferred from"R&L Investment Homes, LLC" to Langston and Son, Inc., a corporation owned by Mr. Langston's father. This was to avoid the federal judgment mentioned above.

A few weeks before the contempt hearing, Mr. Sutton and Ms. Langston phoned the NC Secretary of State and complained that Mr. Langston was forging annual reports that are posted online and are obvious forgeries. He used the reports to go to a bank and open a bank account in the name of "R&L Investment Homes, LLC" and deposited rent money therein in violation of the court order. It is true that the entity had received a notice of administrative dissolution. However, the clerk who answered our call stated that a couple hundred dollars and updated annual reports was all it would take to avoid the administrative dissolution. Ms. Langston and Mr. Sutton asked the clerk to look at the online report that contained forged signatures of Ms. Langston and inquired if they would take action due to the forgery. He stated that they would dissolve the entity immediately if we so desired and "R&L Investment Homes, LLC" was immediately dissolved. So, when David Sutton told Judge Paul that the entity was dissolved due to fraud, it was a true statement. The fact that the forgeries were not the only reason for the dissolution does not make David Sutton's statement false.

During the subsequent hearing over the management of the properties, Judge Paul also held Mr. Langston in contempt for collecting and keeping rents personally in violation of another court order. Mr. Langston was ordered to pay $3K in attorney fees to David Sutton. Mr. Miller attempted to negotiate that way at mediation but the overture was rejected.

Beaufort County District Court Judge Paul personally reached out to the Blackstones (after Mr. Langston was held in contempt) to manage the rental properties (via court order) that was drafted by Mr. Miller and served upon myself (after it was signed by Judge Paul and entered) by Mr. Miller days before the June 6, 2012 mediation. Mr. Miller claimed, in an email, not to know

that the order he drafted and delivered to me concerning the property management had been entered when he inserted the handwritten language on the type written mediated settlement agreement that directed that the Blackstones could no longer collect rent as of the moment the agreement was signed. It is possible that the mediator did discuss ending the property management agreement but not as of that moment. In fact, though Mr. Miller provided an affidavit from the mediator, the mediator was not aware of the court order and told Judge Paul. Lawyers cannot unilaterally undo court orders and the undersigned did not realize that Jeff Miller had written language below the signature line.

The mediation dragged on until after 5 pm and the undersigned had to be home to babysit because his wife had returned to her job as a nurse and worked evenings. David Sutton left the mediation without even getting a copy of the signed mediation agreement. Unbeknownst to David Sutton, Wayne Langston left the mediation and immediately started collecting rents in violation of the court order. Later, Mr. Miller agreed to return the money and follow the court order.

The very next day, by happenstance, Mr. Miller and David Sutton were before Judge Paul on unrelated matters when the Blackstones came into the courtroom and were very upset that Mr. Langston had started collecting rents in violation of the court order the preceding evening. The undersigned obtained a copy of the mediated agreement from Ms. Langston by that time and read the handwritten language from Mr. Miller that was inserted below the signature line. Rita Langston said the she thought the language was added after it was signed but David Sutton informed her that the mediator, David Irvine, was ethical and would not have done that. Neither of us remembered seeing that language and it must have been added right before signature as David Sutton was literally signing and sprinting to his car to get home so his wife could go to work.

David Sutton told Judge Paul that although he was not aware of the language and he certainly did not agree to violate a court order in writing, he {DAVID SUTTON} blamed himself for not being more diligent. Of course, it seemed purposeful on the part of Mr. Miller because he drafted the order that required that all rents be collected by the Blackstones and the order was delivered just a few days before the mediation.

More important though is an email that Jeff Miller sent to Judge Paul afterward that refers to *Ms. Langston and David Sutton* accusing him of inserting the handwritten language after the agreement was signed **or** inserting it below the signature line (paraphrased). The statement in Mr. Miller's email is conjunctive. It can be read as stating that Ms. Langston accused Mr. Miller of adding the language after it was signed (which she did) and Mr. Sutton saying it was inserted below the signature line (when he was in a hurry to get home) which is what Mr. Sutton said in Court, is not a lie and it is not an allegation of unethical conduct against Mr. Miller. It is plausible that the Bar has misconstrued the allegation. For the record, David Sutton does not believe that David Irvine would allow anyone to add language after he mediated an agreement who Mr. Sutton holds in high regard.

28. The answers in paragraphs one through twenty-seven are restated.

29. Admitted.

30. Admitted.

31. Admitted, but the deposition did not take place at the address on the deposition notice prepared by Mr. Sutton. Mr. Peck unilaterally moved the location of a Mr. Lee's deposition (and all the other deponents as well) from Mr. Hardy's law office to his office though Mr. Sutton has subpoenaed Mr. Lee (and all the other witnesses) to Mr. Hardy's law office. David Sutton showed up for day two of the depositions at Mr. Hardy's law office and no one, not even his own client was there. Upon arriving at Mr. Peck's office, he informed me that Mr. Lee had not arrived and suggested that we continue the deposition of my client that he had noticed for the previous day. Mr. Sutton opted to phone Mr. Lee to ascertain his whereabouts but he used a landline from Mr. Peck's office. When Mr. Lee answered the phone he said he "was around the corner like we told him". Since, David Sutton told him no such thing, the undersigned was perturbed. When Mr. Lee arrived he stated that it was Mr. Langston that told him not to come as we would be deposing someone else and he didn't need to come AT ALL. In fact, at least one other witness was told that by Mr. Langston that he did not appear at all. During his deposition, Mr. Lee admitted to also collecting rents (unbeknownst to my client) for years but had no receipts -- even though they were close neighbor. Hence, the depositions did not begin on amicable terms that day. Much of this is contained in Mr. Lee's deposition.

32. Admit that the exchange took place but deny any unethical conduct. If you review the question that Mr. Peck objected to, it is obvious that Mr. Peck did not have a good faith objection to the question but rather was hinting to the witness. As stated, the proceedings started very contentiously given that Mr. Lee was told not to come and Mr. Peck changed the location of the depositions without the consent of the lawyer who set the depositions and subpoenaed them to appear at Mr. Hardy's office. In any event, it is not unethical to ask an attorney to state the grounds for his objection.

33. Admit only that Defendant responded to Mr. Peck's statement that you are not going to belittle me and deny that it is unethical to do so.

34. Admitted; Mr. Peck made constant, baseless objections for two days whenever a legitimate question was posed to a witness what would cast his client in a poor light - which was very frequent. Again, the statements demonstrate frustration and are taken out of context. They were not necessary but they are also not unethical.

35. Admit that Mr. Peck improperly noticed Rita Langston's deposition for May 10th -- as Mr. Sutton had previously noticed Mr. Langston's deposition for all day long on May 10th. Ms. Langston's deposition was not scheduled at all for May 11th. As an accommodation to Mr. Peck, the undersigned consented to a continuation Ms. Langston's deposition on May 11th after Mr. Sutton's other witnesses were deposed EVEN THOUGH MR. PECK MOVED THE DEPOSITIONS WITHOUT CONSENT AND MR. LANGSTON INSTRUCTED THE WITNESSES NOT TO APPEAR AT ALL.

36. Admit only that the statements were made, but they are taken out of context and are not unethical. There is no motion to strike in a deposition. The first comment was a reaction to a very unusual motion and while sarcastic, it is not unethical. The second comment is misleading until you read the preceding part of the deposition. Mr. Langston admitted to putting $30K of marital rents into his parent's bank account -- and not paying the mortgages. Mr. Peck stated that it was not improper to do that. Respectfully, that was a shocking comment from a lawyer and it is the type of conduct that led to Mr. Langston being held in contempt. Moreover, Mr. Peck did not provide discovery regarding the money in Mr. Langston's parent's bank account. The properties were owned by R & L Investment Homes, Inc. Mr. Langston testified that he did not own any of R& L on that day. Hence, it was theft and had Mr. Peck advised him to do so, he was complicit. It is no different than taking a car from a spouse after separation when the car is in only one spouse's name. The court may later say the car is marital but if a separated spouse takes a car in the other spouse's name only, they risk criminal prosecution. The comment was a reaction to an extraordinary situation that while perhaps not necessary, was not unethical. The action is described was unethical.

37. Admitted. It was a lie. The deposition had been going on for two hours THAT DAY. The client had also been deposed the day before for several hours. Again, the context is important because the undersigned asked Mr. Peck when he would be finished and he would not answer. It was close to 5 pm and once again the undersigned had to be home to babysit so his wife could go to work at the hospital. David Sutton consented to the continuation of his client's deposition on the 11th though it was not noticed for that day and MR. PECK UNILATERALLY MOVED THE LOCATION OF MR. SUTTON'S DEPOSITIONS THAT DAY AND THE OPPOSING CLIENT HAD TOLD MR. SUTTON'S WITNESSES NOT TO COME AT ALL. After all that, David Sutton merely asked when Mr. Peck was going to finish so he could go home to babysit. It is not unethical to say damn.

38. Deny as worded because the accusation is vague and nonspecific and the deposition was several hundred pages long. Deny that any unethical instruction was given. The client was given the instructions that most lawyers give routinely such as don't guess and don't speculate.

39. Admit the exchange took place but deny it was anything more than an effort to be helpful by giving a date that the client was unable to do. The date was not really important and Mr. Peck was not offended or bothered in the least. It was not unethical.

40. Admit the exchange took place but deny it was unethical and it too was taken out of context. The context is the Mr. Langston had always taken care of the taxes and he just quit doing it for the past few years and my client, his wife, was unaware until relatively recent to the taking of the deposition. The unfiled taxes were quite a problem. My client knew almost nothing about their finances and Mr. Peck asked her a lot of questions close to 5 pm regarding financial records that she knew almost nothing about.

41. Admit the exchange took place. Deny it is unethical. Again, it was taken out of context. Due

to Mr. Langston's nefarious misdeeds, several marital properties went into foreclosure thought the parties had the funds available to prevent it. Mr. Langston just quit paying and did not inform his wife. After the domestic violence order removed Mr. Langston from the house, Ms. Langston began receiving foreclosure notices. The undersigned presented them to Mr. Peck who had represented that he would address them with his client. Mr. Peck was trying to frame the issue as though my client caused the foreclosure when he knew otherwise. The statements were in reaction to that and while perhaps not necessary, they are not unethical.

42. Admit the exchange took place but deny it was unethical. The parties had over 100 rental units and she did not have a list and I knew it.

43. It was not unethical to state after the fire. Admit the exchange took place.

44. Admit only that the exchange took place but deny it was unethical. Mr. Peck asked the question that investments carry risk don't they? Presumably it was some response to losing property to foreclosure. A sarcastic remark was made in response to a question that was deemed to be sarcastic.

45. Admit the exchange took place but deny any unethical conduct was committed. It is not unethical to pass a note to a client in a deposition. No attempt was made to hide it. The client and David Sutton had spent a lot of time going over the many acts of wasting of marital assets by the opposing client. Ms. Langston was a housewife and it is not improper to take a break in a deposition to assist a client in recalling a long list of items. If she had been advised to give false testimony that would be unethical. David Sutton assisted her in stating accurately important details in her equitable distribution and alimony claims.

46. Deny as worded. Conduct was proper. The deposition was not scheduled that day. It was close to 5 pm and Mr. Peck would not state when he was going to finish.

47. Deny as worded. Since the deposition was not scheduled that day, no motion was necessary. Had it been scheduled for that day, it would not be improper to leave at 5 pm.

48. The answers in paragraphs one through forty-seven are restated.

**** This claim has been answered previously but for clarity sake, the allegations in this claim are incorrect.

58. The answers in paragraphs one through fifty-seven are restated.

59. Admit.

60. Deny.

61. Deny

62. Without knowledge and unable to answer for Judge Gorham.

63. Deny.

64. Deny. The order was not entered during a session of court and the transcript proves it. The order was not stamped by the clerk so there is no proof it was ever entered and the case number cited by the State Bar was not created until December 13, 20012.

65. Admit that part of Rule 12 is restated therein.

WHEREFORE, the Defendant respectfully requests that the relief requested by the North Carolina State Bar be denied as the Defendant did not commit unethical conduct which requires discipline as alleged by the State Bar.

This the 11th day of July, 2013.

David C. Sutton, Attorney/Defendant
105-B Regency Boulevard
Greenville NC 27834
252-756-7124
NC State Bar No. 29825

NORTH CAROLINA
PITT COUNTY

VERIFICATION/AFFIDAVIT

David C. Sutton, being first duly sworn, deposes and says that he is the Defendant in the above-entitled action, that he has read the foregoing Answer~~and~~ knows the contents thereof, and the said contents are true of ~~his own~~ knowledge, save and except for those matters and things stated therein upon information and belief, ~~as to such~~ matters and things, he believes said contents to be true.

David C. Sutton

Sworn to and subscribed to before me this 11th day of July, 2013.

Notary Public

My commission expires: 04/14/15

HILLARY L. LYNN
NOTARY PUBLIC
PITT COUNTY, N.C.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Answer was served upon counsel of record by depositing the same in a postpaid wrapper in an official depository under the exclusive care and custody of the United States Postal Service addressed as follows:

Mary D. Winstead
Deputy Counsel
North Carolina State Bar
PO Box 25908
Raleigh NC 27611
and via facsimile

Carmen Hoyme Bannon
Deputy Counsel
North Carolina State Bar
PO Box 25908
Raleigh NC 27611
and via facsimile

This the 11th day of July, 2013.

David C. Sutton